

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:MT:DET:POSTF-149849-01
GEGabriel

date: October 30, 2001
to: Donald Goodwin
Team Coordinator

from: Area Counsel
(Heavy Manufacturing Transportation: Edison)

subject: [REDACTED]
Informal Claim

This memorandum responds to your request for our legal opinion on whether [REDACTED] ("Taxpayer") filed an informal, "protective claim" for purposes of tolling the statute of limitations applicable to underpayment interest for taxable years [REDACTED]-[REDACTED]. This memorandum should not be cited as precedent.

Issue

Whether under the circumstances described below, [REDACTED] filed a protective claim for purposes of tolling the statute of limitations applicable to underpayment interest.

Conclusion

Yes. The letter, dated [REDACTED], from taxpayer's authorized representative constituted an informal, "protective" claim.

Facts

Taxpayer is a "Tier one" supplier of a broad line of motor vehicle parts including bearings, seals and spark plugs. On [REDACTED] taxpayer, through its attorney, [REDACTED] of [REDACTED], sent a letter (hereto attached as Exhibit A) to Appeals Officer Patricia A. Swanson, stating "pursuant to our discussion of [REDACTED], this letter will serve as the Taxpayer's claim for refund with respect to the credit elect issue." The Service received the letter two business days later. On [REDACTED], Taxpayer executed a Form 870-AD that was accepted by the Service on [REDACTED]. The agreement covered tax years [REDACTED] and [REDACTED] through [REDACTED], and excluded [REDACTED].

Discussion and Analysis

Section 6601(g) of the Code provides that interest on any tax may be assessed and collected at any time during the period within which the tax to which the interest relates may be collected.

Section 6501(a) of the Code states, generally, that the amount of any tax imposed must be assessed within 3 years after the return was filed.

Section 6402(a) of the Internal Revenue Code provides the Commissioner is authorized to credit, within the applicable period of limitations, an overpayment against any liability in respect of an internal revenue tax of the person who made the overpayment, and must refund any balance to that person.

Section 301.6402-2(b) of the Procedure and Administration Regulations provides that no refund or credit will be allowed after the expiration of the statutory period of limitation applicable to the filing of a claim therefor except upon one or more of the grounds set forth in a claim filed before the expiration of such period. The claim must set forth in detail each ground upon which a credit or refund is claimed and facts sufficient to apprise the Service of the exact basis thereof.

Courts have held that informal claims, although they must fairly advise the Service of the nature of the claim, need not comply with formal requirements of the regulations. *Kales v. United States*, 314 U.S. 186, 194 (1941); *New England Electric System v. United States*, 32 Fed. Cl. 636 (1995). There are three requirements to constitute an informal claim under case law. First, the informal claim must provide the Service with notice that the taxpayer is asserting a right to a refund. Second, the informal claim must have a written component. Finally, the claim must describe the legal and factual basis for the refund. *American Radiator & Standard Sanitary Corp. v. United States*, 162 Ct. Cl. 106, 113-114 (1963).

On these facts, the letter dated [REDACTED], satisfies all three of these requirements. In addition, the letter was timely filed within the applicable statute of limitations. The letter specifically puts the Service on notice that the taxpayer is seeking a refund for the "credit elect" issue and validates an oral communication of the same three days earlier. Although the letter emphasizes that the refund could be processed for taxable year [REDACTED] after the Service clarifies its position on the credit elect issue, the scope of the letter for purposes of asserting a claim clearly references taxable years [REDACTED]-[REDACTED]. The claim was timely filed in writing and sets forth sufficient facts and the underlying legal authority. By referring to the "credit elect" issue it was understood by both parties to mean taxpayer's election on its timely filed Federal Income Tax Return to apply the overpayment to its tax liability for the next

taxable year. These facts, to a large degree, are computational. The letter specifically cites the court's holding in *May Department Stores Co. v. United States*, 36 Red. Cl. 680 (Ct Cl. 1996). Accordingly, this letter is sufficient to constitute a protective claim for underpayment interest.

Should you have any questions concerning this matter, please contact the undersigned attorney at (313) 237-6424. This advice is subject to National Office Review and should not be relied upon or disseminated for a period of 30 days or upon notification of this office.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

Phoebe Nearing
Associate Area Counsel
(Large and Mid-Size Business)

Grant E. Gabriel

By: _____
GRANT E. GABRIEL
Attorney (LMSB)

The memorandum submitted by Area Counsel should be amended to discuss the timeliness of the protective claim. Specifically, the memorandum should also be amended to reflect execution of Form 870-AD by the taxpayer and acceptance by the Service covering [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. The reference to taxable year [REDACTED], on page 2, paragraph 4, line 5, should be to taxable year [REDACTED].